IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/03/2003

Coram

The Hon'ble Mr. Justice E.PADMANABHAN

W.P.No.19079 of 1998
and
W.M.P.No.28936 of 1998

R.Soundararajan Poosari,
Managing Trustee of
Arulmighu Mariamman
Temple, Virudhunagar Dist .. Petitioner

-Vs-

The Joint Commissioner,
H.R & C.E. Administration Department,
Sivagangai District .. Respondent

Petition filed under Article 226 of The constitution of India praying to issue a writ of certiorari for the reasons stated therein.

For Petitioner : Mr.V.Venkatasamy

For Respondent : Mr.G.Sukumar, Spl.G.P.

:O R D E R

The writ petitioner, Managing Trustee of Arulmigu Mariamman Temple, Irukkangudi Village, has prayed for the issue of a writ of certiorari, to call for the records from the respondent relating to his proceedings Na.Ka.No.11079/Aa1 dated 9.10.1998 and quash the same.
2. The matter is pending at the stage of notice of motion issued on 12.03.1998.

3. Heard the learned counsel appearing for the petitioner Mr.V. Venkatasamy and Mr.G.Sukumar, learned Special Government Pleader, appearing for the respondent.

4. According to the learned counsel appearing for the petitioner, the impugned show cause notice is without jurisdiction and the respondent has acted arbitrarily and in excess of jurisdiction, in issuing the show cause notice.

5. It is contended by Mr.Venkatasamy, learned counsel appearing for the petitioner that the petitioner temple is admittedly a listed temple in

terms of Section 46(iii). Further publication has already been made by the Commissioner HR & CE including the petitioner temple as one of the listed temples whose income is more than 10 lakhs of rupees.

6. It is admitted by the learned special Government Pleader that the petitioner temple Arulmigu Mariamman Temple, is a listed temple in terms of the Notification issued under Section 46(iii) and there is no dispute.

7. In respect of listed temples, according to the learned counsel appearing for the petitioner, action, if any, could be taken only by the Government, who is the "appropriate authority" as provided for under Section 53(1)(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959.

Section 53(1) reads thus:
in this section the expression "appropriate authority" shall, unless the context otherwise requires, means:-
(a) in respect of any trustee of any religious institution included in the list published under clause (iii) of section 46, the Government.
(b) in respect of any religious institution included in the list published under clause (ii) of section 46, the commissioner."

8. We are not concerned with Clause (b), (c) and (d) of Sub Section (1) of Section 53. In terms of Section 53(1)(a), the appropriate authority in respect of listed temples under Section 46(3)(i) is the Government. There is no dispute in this respect. The respondent herein not being an appropriate authority, has neither the authority nor jurisdiction to initiate action under Section 56 against the petitioner.

9. Under Sub Section (2) of Section 53, the appropriate authority alone may suspend, remove or dismiss any Trustees for anyone or more of the misconducts enumerated under Section 53(2)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (jj) and (k).

10. Sub Section (3) of Section 53 provides that the appropriate authority alone shall frame charges when it proposes to take action under Sub Section (2) of Section 53. The appropriate authority has to frame charges against the Trustee concerned and give him an opportunity of meeting such charges, testing the evidence adduced against him and of adducing evidence in his favour; and thereafter pass orders of suspension, removal or dismissal by stating or recording the reasons after considering the explanations and recording its findings on each charge with reasons therefor.

11. As already pointed out, with respect to the petitioner temple the appropriate authority is the State Government and not the respondent herein to initiate action under Section 53 of the Act. In terms of Sub Section (3) of Section 53, it is the appropriate Government, which could initiate action and not the respondent herein.

12. What is sought to be contended by Mr.Sukumar, learned Special Government Pleader being that the respondent has called for an explanation from the petitioner with a view to forward the same and place it before the

appropriate authority viz., the Government. Even this is impermissible in law. When the statutory provisions direct particular thing to be done by a particular authority, it shall be by the particular authority and in specified manner and no other method is permissible and no other authority could exercise such a function.

13. A perusal of the impugned show cause notice would demonstrate that the explanations or the contentions sought to be advanced by the learned Special Government Pleader cannot be sustained at all. In Paragraphs 1 and 2 of the show cause notice dated 9.10.1998, a number of imputations have been set out. In paragraph 3, the respondent has charged the petitioner as guilty of misconducts or violations as provided in Section 53(2)(b), (c), (d), (e), and (j). It is therefore clear that the petitioner has been called upon to show cause as to why the Trustee should not be removed from office on those charges.

14. In pages 2 and 3 of the show cause notice as many as seven formulated charges are set out. It is not as if they are mere imputations or certain omissions in respect of which certain explanations have been called for from the respondent. It is clear from the show cause notice that seven formulated charges have been framed with reference to misconduct falling under Section 53(b), (c), (d), (e) and (j).

15. Even according to the respondent, the charges fall under one or more of the said misconducts enumerated in Section 53(2) and for which, the petitioner has been called upon to show as to why the petitioner Trustee should not be removed from the office. Therefore, it is clear that it is a show cause notice issued by the Joint Commissioner, who is not an appropriate authority to remove or suspend the trustee of a listed temple. At the end of the show cause notice, it has been stated incidentally that if the explanation is not forthcoming, the matter will be taken up further with higher authority. It is not as if on the directions of the State Government, the respondent has framed the charges. In respect of the petitioner, the State Government is the appropriate authority and Proceedings if any could be initiated under Section 53(2) if at all by the State Government alone and no one else could initiate action.

16. In the circumstances, the action of the respondent is without jurisdiction and on this ground, the impugned show cause notice being one without authority and in excess of jurisdiction is quashed. The writ petition is allowed. No costs. Consequently, connected W.M.P. is closed.

17. However, it is made clear that it is open to the appropriate authority to initiate action on receipt of a report from the respondent herein, if the appropriate authority, deems fit.
E.PADMANABHAN,J.
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18. The respondent shall submit the report or place the file before the appropriate authority viz., the State Government, without delay and it is for the State Government to take appropriate action, without further delay.

Index: Yes
Internet : Yes

msk

To
The Joint Commissioner,
H.R & C.E. Administration Department,
Sivagangai District